



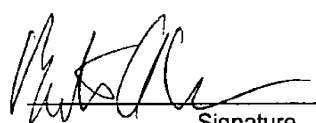
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REQUEST FOR ORAL HEARING BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES		Docket No. (Optional) 22116-00005-US3	
		In re Application of Nicolaas M.J. Vermeulen et al.	
		Application Number 09/396,523-Conf. #7553	Filed September 15, 1999
		For NOVEL POLYAMINE ANALOGUES AS THERAPEUTIC AND DIAGNOSTIC AGENTS	
		Art Unit 1621	Examiner P. O'Sullivan
Applicant hereby requests an oral hearing before the Board of Patent Appeals and Interferences from in the appeal of the above-identified application.			
The fee for this Request for Oral Hearing is (37 CFR 1.17(d))		\$	145.00
<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is:		\$	
<input type="checkbox"/> A check in the amount of the fee is enclosed.			
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.			
<input checked="" type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.			
<input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 22-0185. I have enclosed a duplicate copy of this sheet.			
<input type="checkbox"/> A petition for an extension of time under 37 CFR 1.136(b) (PTO/SB/23) is enclosed. For extensions of time in reexamination proceedings, see 37 CFR 1.550.			
I am the			
<input type="checkbox"/> applicant/inventor.		 Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).		Burton A. Amernick Typed or printed name	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number 24,852		(202) 331-7111 Telephone number	
<input type="checkbox"/> attorney or agent under 37 CFR 1.34(a). Registration number if acting under 37 CFR 1.34(a).		1-15-04 Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of 1 forms are submitted.			

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Docket No.: 22116-00005-US3
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE UNITED STATES BOARD
OF PATENT APPEALS & INTERFERENCES**

Application No.: 09/396,523

Group Art Unit: 1621

Filing Date: September 15, 1999

Examiner: Peter G. O'Sullivan

Appellants: Vermeulen et al

REPLY BRIEF UNDER 37 CFR 1.193

Attention: Board of Patent Appeals and Interferences

Commissioner for Patents

P. O. Box 1450

Arlington, Virginia 22313-1450

Dear Sir:

This is a REPLY BRIEF to the Examiner's Answer dated November 21, 2003.

The rejection of claims 3, 33-45, 47, 48 and 53 under 35 U.S.C. 103(a) as being unpatentable over Cherksey et al. is merely based upon the statement "it is expected there will be differences in activity of various steteoisomers in biological systems." This statement by the examiner is not an adequate foundation upon which to sustain a rejection under 35 U.S.C. 103(a). This rationale to support the rejection must fail since insufficient evidence has been presented to substantiate this statement of scientific theory. See *In re Mills* 126 U.S.P.Q. 513 (CCPA 1960) and *Ex parte Levengood*, 28 U.S.P.Q.2nd 1300 (USPTO - Board of Patent Appeals and Interference, 1993).

Moreover, the Examiner's statement seems to be an attempt to rely on per se rules of obvious. As stated in *In re Ochiai*, 37 U.S.P.Q. 2d 1127, 1133 (Fed. Cir. 1995), "reliance on per se rules of obviousness is legally incorrect and must cease." Also see *Ex parte Granneman* 68 U.S.P.Q. 2d 1219 (USPTO - Board of Patent and Interferences, 2003).

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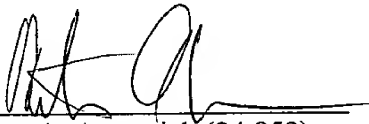
Conclusions

In view of our Appeal Brief and the above comments, it is abundantly clear that the Primary Examiner has erred in the rejection of the claims. Accordingly, it is requested that the Board reverse the Examiner's decision and allow the rejected claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayment associated with this communication including any extension fees to Deposit Account No. 22-0185.

Dated:
7999_1

Respectfully submitted,

By 

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